

SUPREME COURT OF INDIA

Board of Trustees of the Port of Mumbai

Vs.

Nikhil N.Gupta & Anr.

C.P.(Civil)No.277 of 2012

(T.S.Thakur,J., V.Gopala Gowda and R.Banumathi,JJ.,)

25.08.2015

JUDGMENT

R.Banumathi, J.,

SLP(Civil)No.26541 of 2005

1. This Contempt Petition has been filed by the Board of Trustees of the Port of Mumbai (hereinafter referred to as 'Port Trust'), who was the original respondent in SLP(C) No.26541 of 2005, against the respondents-contemnors for disobeying the order of this Court dated 27.01.2006, whereby this Court while dismissing the special leave petition granted one year's time to the respondents herein to vacate the premises subject to the undertaking furnished by them.

2. Before advertng to the legal issues, brief facts which led to the filing of this Contempt Petition need to be enumerated. The petitioner is the statutory corporation incorporated under the Major Port Trust (Amendment) Act, 1974. The Port Trust leased out the suit premises admeasuring 484.95 sq. mtr. by a lease deed dated 11.07.1944 to one Abdul Majid Haji Sulleman Noorani, predecessors of the leasehold rights of the respondents for a period of ten years commencing from 01.01.1943. As per the petitioner, the respondents are the successors to the said Abdul Majid for the unexpired period of lease. The said lease expired on 31.12.1952 and has not been renewed; but the respondents continued to occupy the premises. The Port Trust filed eviction suit seeking the respondent-company to vacate the suit premises and for possession and had obtained decree against the respondent-company in LE & C Suit No.355/481 of 1978 decided on 25.01.1990. The respondent-company has preferred the appeal No.181/1990 which was dismissed by the Appellate Bench of Small Causes Court at Bombay vide order dated 05.12.2003. The respondent has preferred a Writ Petition(C) No.4722/2004 before the Bombay High Court and the High Court has dismissed the writ petition by an order dated 03.10.2005. The respondents have preferred special leave petition before this Court which was dismissed by this Court on 27.01.2006. However, this Court has accepted the respondents prayer to give one year time from the date of the order i.e. 27.01.2006. The said order reads as under:-

“Heard. The special leave petition is dismissed. However, the counsel appearing for the petitioner prays for some time to vacate the premises in question. Having heard the learned Solicitor General appearing for the caveator/respondent, one year’s time is granted to the petitioner to vacate the premises in question subject to its filing the usual undertaking to this effect in this Court within four weeks from today.”

Pursuant to the order dated 27.01.2006, the respondent No.1-Nikhil Gupta, Director of respondent No.2-Company, filed an affidavit of undertaking.

3. In spite of the undertaking furnished by them before this Court in February, 2006, the respondents till date have not vacated the premises. In the meantime, petitioner-Port Trust had filed an Execution Application bearing No.567/2010 on 20.07.2010 before Small Causes Court and notice was issued to the respondents. The bailiff of the Court, P.A. Gole made an attempt to serve on the respondents, but it was found that contemnors have changed their addresses. Thereafter, thrice the bailiff alongwith the Office Inspector visited the new addresses and found the contemnors’ offices were not even located in the premises and hence the notice could not be served upon the respondents.

4. Alleging willful disobedience of this Court’s Order dated 27.01.2006, petitioner has filed this Contempt Petition contending that in spite of specific undertaking given by the respondents before this Court in February, 2006, the respondents are not vacating the premises and the respondents have willfully disobeyed this Court’s order dated 27.01.2006 and have changed their addresses to avoid notice in execution case. The petitioner has further argued that in the execution case, since till date no service was made, hence, notices issued to obstructionists were pasted on the suit premises on 09.07.2015 and the matter is now adjourned to 02.09.2015 for reply of remaining obstructionists.

5. Per contra, the respondent No.1-Nikhil Gupta has contended that Port Trust had let out the subject plot to respondent No.2-Company, which had constructed a structure on the disputed premises and let out the suit land/premises to third parties; other portions are encroached by others. Further respondent No.1 contends that respondent No.2-company has also filed a suit for eviction of tenant being Suit No.45/69 of 2004 viz. M/s Joharimal Deviprasad and others which is pending hearing and final disposal in the Small Causes Court at Bombay. According to the respondents, assuming that they had undertaken to handover the vacant possession of the suit land to the Post Trust, the respondents would be able to acquire the vacant possession only after evicting the occupants of the structure and demolishing the structure. Respondents contend that the petitioner has filed Contempt Petition in the year 2012 i.e. after a lapse of about six years only for the reason that it has not been able to execute the decree passed against the respondent No.2 and the Contempt Petition is not maintainable in view of Section 20 of the Contempt of Courts Act, 1971. The respondents denied that there are any arrears of rent. It was argued that the third parties who were in actual possession were not impleaded in the suit.

6. On behalf of the petitioner as it was stated that because of change of the addresses of the respondents, could not even serve notice on them in the execution petition. On 24.08.2012, this Court directed the executing court to expedite the hearing and dispose of the execution proceedings. When the matter came up for hearing on 10.10.2014, learned counsel for petitioner submitted that inspite of direction given by this Court on 24.08.2012, the executing court has not been able to make much headway because the respondent-company has not been cooperating and has been avoiding notices issued to it. By an order dated 10.10.2014, this Court has passed the following order:-

“...Mr. Shyam Divan, learned senior counsel for the respondents on the other hand submits that the judgment debtor company has been appearing and is duly represented by a counsel. At any rate Mr. Divan undertakes on behalf of the respondent-contemnor as also the judgment debtor company to enter appearance before the executing court on the next date of hearing. In that view, therefore, we direct the Executing Court to expedite execution of the decree passed in favour of the petitioner-decree-holder and submit a report to this Court before the next date of hearing.”

7. Learned Senior Counsel for petitioner urged that in terms of the order passed by this Court in SLP (C) No.26541/2005 dated 27.01.2006, the respondent-company was obliged to deposit the entire arrears of rent and submitted that the respondent No.2 has not deposited or paid rent to the decree-holder and the respondents have not complied with even that part of the direction and stated that as on 30.11.2010, a sum of Rs.82,37,958.11 is payable to the decree-holder on the principles laid down in *Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai and Anr'*, On that submission, Mr. Shyam Divan, learned Senior Counsel for the respondents submitted that subject to the final outcome of these proceedings, the contemnors shall deposit the amount of Rs.82,37,958.11 before this Court within eight weeks from the date of hearing i.e. 10.10.2014. Accordingly the said amount of Rs. 82,37,958.11 was deposited in this Court which in terms of this Court's order dated 01.12.2014 directed to be deposited for a period of two years.

8. The respondent has at that stage submitted that neither respondent No.2-company nor respondent No.1 was in actual physical possession of the plot of land and building and that some third parties are in actual physical possession of the leased property and therefore the decree cannot be executed. On that submission, by an order dated 10.10.2014, this Court has directed the respondents to file in this Court a list of all the occupants in the disputed property which was filed by the respondents later on.

9. The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. [Vide: *Union of India & Ors. Vs. Subedar Devassy PV²*, It is evident from the material on record that the dispute between the parties had been adjudicated and had attained finality and it is not open to the respondents to go beyond the orders. As noticed earlier, when this Court dismissed the special leave petition by order dated 27.01.2006, the respondents herein (petitioner in the special leave petition) were

granted one year time to vacate the premises in question subject to its filing usual undertaking in this Court within four weeks from 27.01.2006. In compliance thereof, the respondents herein (petitioner in the special leave petition) have filed affidavit of undertaking. The relevant portion thereof reads as under:-

“5. The petitioner also undertakes in terms of the order dated 27th January 2006 to vacate the premises within and/or expiry of one year period granted by this Hon’ble Court.” Having filed the Affidavit of Undertaking, now the respondents have the audacity of denying having filed the said affidavit of undertaking. In reply affidavit filed in the Contempt Petition, the first respondent - Nikhil Gupta has stated that “...It is not admitted that the respondents had given an undertaking to hand over the premises in question as alleged or at all...”

10. It is also pertinent to note that the respondents have filed interlocutory application No. 2 of 2014 praying to release the first respondent from the undertaking which he had filed before this Court. In the application, the first respondent stated that he had filed the undertaking on legal advice and without considering the ramifications thereof. Be it noted that both while filing the application and also while filing the reply affidavit in the Contempt Petition, the respondents had the benefit of legal advice and, while so, the respondents are not justified in taking contradictory stand at different points of time.

11. In the given facts and circumstances of the case, Court may permit a party to withdraw an undertaking provided it is within reasonable time and before the party has availed the benefit of the order pursuant to said undertaking. Based on the undertaking, the respondent obtained the benefit of extension of time for vacating and handing over the possession; the respondents are duty bound to vacate the premises voluntarily. In this case, application to withdraw the undertaking was filed only in May 2014 after the respondents have availed the benefit of extension of time.

12. Be that as it may, in the Contempt Petition respondents have entered appearance. When the Contempt Petition was listed on 02.11.2012, on behalf of the respondents, a letter dated 31.10.2012 of Mr. Jatin Zaveri, advocate for respondents, was circulated seeking adjournment for filing counter affidavit and in view of letter circulated on 02.11.2012, this Court granted time to the respondents for filing counter affidavit. Thereafter, Contempt Petition again came up for hearing on 13.09.2013.

13. In the meanwhile, on 17.04.2013 in the Execution Application No. 567/2010 in LE & C Suit No. 355/481 of 1978, Sarla Gupta, Director of the second respondent company filed a counter affidavit (Annexure A-1, page Nos. 137-142) stating that the third parties are in occupation of the building and that they had filed a suit being Suit No. 45/69 of 2004 against M/s Joharimal Deviprasad & Ors. for eviction in respect of the portion of the building constructed on the suit property and the said suit is pending for trial. In the said counter affidavit, it is also averred that the said lessees M/s. Joharimal Deviprasad and others are in occupation of more than half of the constructed building and the lessees had sub-let the other premises to the third parties who are in actual possession of the remaining portion in the

ground floor, first floor and second floor. In her affidavit, Sarla Gupta further averred that the petitioner-Board of Trustees of the Port of Mumbai (for short 'Port Trust') never filed a suit for mandatory injunction for vacating and handing over of building in spite of the fact that there is a building already in existence prior to filing of the eviction suit against the respondents and therefore without a decree for mandatory injunction for remaining part of the building, the building cannot be removed and the decree is inexecutable.

14. Upon consideration of the said objections and also contention of the Port Trust, the executing court – Court of Small Causes of Bombay passed a detailed order dated 10.11.2014 (Annexure A-5, page Nos. 146-148) and directed issuance of possession warrant under Order XXI Rule 35 CPC in respect of the suit premises. The said order reads as under:-

“....The defendants have specifically undertaken that they will vacate the suit premises within one year from the date of above order. But the defendants have failed to do so.”

“ The defendant has disobeyed the undertaking and raised objection for execution of decree. On the aforesaid reasons, I am of the view that it is necessary to issue the possession warrant as per Order 21 Rule 35 of C.P.C. to grant the fruits of decree to plaintiff. Hence, I proceed to pass the following order:

ORDER

1. Issue possession warrant under Order 21 Rule 35 of C.P.C. in respect of suit premises against the defendants.
2. Bailiff Shri M.F. Qureshi is hereby appointed to execute the decree returnable on 17.12.2014.”

15. Immediately within a couple of days i.e. on 14.11.2014, Sarla Gupta, Director of the second respondent Company filed a petition before the executing court to stay the order dated 10.11.2014 (Annexure A-6, page Nos. 149-150) stating that the judgment debtors are intending to prefer a revision against the order dated 10.11.2014 passed by the executing court. On that application, vide order dated 15.11.2014 (Annexure A-7, page Nos. 151-152), executing court stayed its own order of delivery of possession dated 10.11.2014. The said order reads as under :-

“3. Heard both parties. Perused record and proceeding. Considering the facts, it is noted that on 10.11.2014 possession warrant in respect of suit premises was issued under Order 21 Rule 35 of C.P.C. The defendant intended to challenge said order for filing Revision before Appeal Court. The dispute involved in this matter is in respect of possession of immovable property. Therefore, it is necessary to give the reasonable time to defendant to challenge said order before appeal court. Hence, for the interest of justice, execution of possession warrant is stayed for 30 days.. ”

16. It is relevant to note that in the meanwhile, on 10.10.2014, when the Contempt Petition came up for hearing before this Court learned Senior Counsel for the petitioner-Port Trust submitted that the executing court has not been able to make much headway because the judgment debtor company has not been co-operating and has been avoiding notice issued to it. Per contra, learned Senior Counsel for the respondents, submitted that the judgment debtor company has been appearing in the executing petition and is duly represented by a counsel and at any rate he undertook on behalf of the respondents that judgment-debtor Company would enter appearance before the executing court. Based on the submissions, we directed the executing court to expedite the execution of the decree passed in favour of the petitioner-decree holder and submit a report to this Court before the next date of hearing. Further, the respondents were directed to deposit a sum of Rs.82,37,958.11/- before this Court and they were also directed to remain present in this Court on the next date of hearing i.e. on 11.12.2014.

17. It was at that juncture, on realizing the seriousness of the situation, the second respondent filed a petition on 24.11.2014 (Annexure A-8, Page Nos. 153-155) before the executing court praying for withdrawing the application for stay and also for vacating the stay order dated 15.11.2014 passed by the executing court on their own application. The first respondent herein sought to withdraw the stay application under the pretext that the said application was made “under a misconception and without consent of Nikhil Gupta, a co-director of company”. By perusal of the records, it is seen that in her affidavit filed in the executing court (Annexure A-1, page Nos. 137-142), Sarla Gupta signed the affidavit stating that she is the Director of the judgment-debtor company and that she was authorized to file the reply affidavit on behalf of the judgment-debtor company. While it is not known, as to how first respondent-Nikhil Gupta could resile from the stand taken by Sarla Gupta another Director of the respondent No. 2-Company could allege that the said application was made without his concurrence. Without going into the nuances of the matter, on the application filed by Nikhil Gupta, vide order dated 25.11.2014 (Annexure A-9, page Nos. 158-159), executing court had vacated the stay order dated 15.11.2014.

18. The principles relating to Contempt of Court are clear. The definition Civil Contempt includes willful breach of an undertaking given to a Court. Public interest requires that solemn undertakings given to a Court with the intention of obtaining any benefit should not be breached willfully. The respondents cannot be absolved of the undertaking on purely ground that the undertaking was given under misconception. The breach of solemn undertaking given to a Court is a serious matter and will have to be sternly dealt with. On the facts, prima facie it appears that the act of the respondents is in clear violation of the order of this Court dated 27.01.2006. Having said that presently we are not inclined to go into the question as to the action to be taken against the respondents for disobedience of the order of the Court.

19. Since the respondents have taken the plea that the third parties are in actual occupation of that building, vide order dated 10.10.2014, we have directed the respondents to file in this Court a list of all the occupants of the super structure raised on the said property and the terms on which these occupants were inducted into the possession of their respective portions

and also the complete addresses of the occupants shall also be set out in the list. In compliance of the said order, respondents have filed a list of those occupants as under:-

Sr. No.	Name of Tenant	Portion of Building occupied
1.	M/s Joharimal Deviprasad (partnership firm)	Major portion of ground floor, approx. 2500 sq. feet of carpet area
2.	C.K. Industries Pvt. Ltd.	Remainder portion of the ground floor, approx. 700 sq. ft. and entire 1st floor (except terrace room and office cabin) measuring approx. 1500 sq. feet
3.	Gautam K. Bharat	1st floor terrace room and office cabin measuring about 350 sq. feet
4.	Family of Late Bachansingh Rawat	One room of approx. 150 sq. ft. on the 2nd floor and part of open terrace
5.	Jagtap Kadam	200 sq. feet in garage room on the ground floor of the building
6.	Harday Shankar Mishra	200 sq. ft. in garage room on the ground floor of the building

20. In the executing court, bailiff has returned the possession warrant stating that the obstructionists refused to vacate the premises and hand over possession. In his report, bailiff has given the list of obstructionists as under:-

“1) Mr. Vijay Chimanlal Gupta, Director of M/s C.K. Industries Pvt. Ltd and also Director of M/s Khushiram Chimanlal Pvt. Ltd.

2) Shri (Advocate) Gautam Krishna Bharat 64 yrs.

3) Smt. Rameshwari Devendra Rawat 42 yrs.

4) Shri Anil Kumar Laldhari Gupta 38 yrs.

5) Smt. Rajeshwari Bachan Singh Rawat 82 yrs.

6) Shri Kamlesh Singh Devendra Rawat 20 yrs.

7) Smt. Nanda Raju Doodmani 28 yrs.

8) Smt. Manju Khushal Singh Rana 70 yrs.

9) Shri Pramod Balaram Patil 53 yrs.”

21. In the reply affidavit filed by first respondent-Nikhil Gupta, it is stated that respondent No.2-Company had filed Suit No. 45/69 of 2004 for eviction of its tenant, namely, M/s Joharimal Deviprasad & Ors. and the said suit is now pending hearing and final disposal in the Small Causes Court at Bombay. According to the respondents, the said M/s Joharimal Deviprasad and others are occupying more than half of the constructed building. It is stated that the lessees sub-let the said premises to third parties who are in actual possession of the remaining portion in the ground floor, first floor and second floor as aforesaid.

22. Onbehalf of the petitioner, it is submitted that Director of M/s C.K. Industries Pvt. Ltd. is the cousin of the respondents and that M/s C.K. Industries Pvt. Ltd. was inducted by the original tenant-the second respondent-Khushiram Tarachand Pvt. Ltd. Further contention at the hands of the petitioner is that another occupant, Shri Gautam Krishna Bharat is the advocate for the respondents who filed the application on 14.11.2014 for stay of the warrant of possession. Our attention was also drawn to the application for withdrawal of stay petition filed in the executing court (Annexure A-8, page Nos. 153-155), which was filed by Shri Gautam Krishna Bharat, Advocate for the respondents. The order dated 25.11.2014 of the executing court, (Annexure A-9, page Nos. 158-159), it is seen that M/s Bharat & Co. is the advocate for the judgment debtor. Gautam Krishna Bharat who is stated to be another obstructionist, is none other than the advocate for the respondents.

23. All the obstructionists have filed objections before the executing court contending that the decree is inexecutable as there is no direction to remove the existing building and in the absence of any such direction, the obstructionists cannot be removed. In the month of June, 2015, one Vijay Chimanlal Gupta, Director of M/s C.K. Industries Pvt. Ltd. filed affidavit of objection before the executing court and the objections by other obstructionists are on the same lines. We may usefully refer to the relevant averments in the said affidavit:-

“6. I say that the Plaintiffs on the basis of decree obtained against the defendants for vacant site, can not remove the Obstructionist from the building as there is no direction for getting possession of building in the decree against the persons who are not parties to the suit.

7. I say that the Plaintiffs are not owners of the building. The Obstructionists are in possession of the building in their own right. Even if Plaintiffs claim ownership of building on the basis of the decree passed in respect of vacant site, then the decree passed under Section 41 of Presidency Small Causes Act will become null and void and the same can not be executed against the Obstructionist as the building in which we are occupying is covered by Rent Act and the decree passed against the Defendants can not be executed against us. Hence the decree passed in favour of Plaintiffs is illegal, invalid and can not be executed.”

24. It is pertinent to note that at the time when the special leave petition was dismissed giving time to the respondents to vacate, the respondents never raised the plea that the third parties are in occupation of the premises and that they cannot be removed from the building. It is relevant to note that in the lease deed, it is clearly mentioned that at the expiration or sooner determination of term of the lease, the lessee shall remove the building standing on the demised lands in the event quietly deliver upto the Trustees, the said demised premises together with building thereon in good condition. In terms of the lease and also as per their undertaking, the respondents are bound to hand over vacant possession of the land as well as the building.

25. The respondents who were the lessees were allowed to continue in the demised premises. It is not known, as to how the obstructionists can claim that they are in occupation of the premises on their own right. It took nearly about three decades for the petitioner - Port Trust to obtain the decree of eviction. When the dispute relating to lease had attained finality, the obstructionists have no right to continue in occupation and cannot have any right to continue in occupation. In the facts and circumstances narrated above, in our considered view, the case put up by the obstructionists is a clear abuse of process of law. The petitioner - Port Trust cannot undergo ordeal of another round of litigation against the obstructionists who can have no better right to be in occupation than that of the respondents.

26. Keeping the Contempt Petition pending, in the interest of justice, we issue the following directions:-

“(i) Notwithstanding the objections filed by the respondents, the executing court is directed to issue warrant of possession and the bailiff shall remove all the obstructionists and hand over vacant possession to the petitioner -Port Trust.

(ii) The Commissioner of Police, Mumbai is directed to render all assistance to the bailiff in execution of the warrant of possession and ensure that the vacant possession of the entire premises is handed over to the petitioner -Port Trust.

(iii) Obstructionists shall co-operate in the execution of the warrant of possession. Obstructionists are at liberty to approach this Court for redressal of their grievances, if any.”

27. The executing court shall submit a report to this Court. List the Contempt Petition after three months.

Judgment Referred.

¹(2004) 3 SCC 0214

²(2006) 1 SCC 0613